

January 22, 2020

Fred Bruyns, Rule Coordinator
Workers' Compensation Division
Department of Consumer and Business Services
350 Winter Street NE
Salem, Oregon 97309-0405

Re: Division 436 rulemaking

Dear Fred:

We are writing to you to express our concerns about the proposed rules amending 436-035. While we understand that the *Caren* ruling necessitates rulemaking by the division, we feel that some of these rules go beyond the *Caren* ruling and legislative intent. These rules undermine the fundamental tenet of our workers' compensation system that employers are responsible for injuries or health conditions caused by the workplace. This interpretation means that employer and insurers must either issue immediate denials or must bear the cost of pre-existing conditions that have nothing to do with the workplace.

Another concern that we have is the proposed "stylistic" change from "must" to "may." These two words have fundamentally different meanings and might be interpreted by the Workers' Compensation Board and the courts to be substantive, rather than stylistic, changes. As such, we request that such changes not be made.

We have two additional concerns with the proposed rules. First, the proposed changes to OAR 436-030-0035(5) might cause issues in certain situations where closing examinations might be performed by another physician. Leaving the past reference to this situation intact would ensure that there are not issues when this arises. Second, the removal of the time stamp requirement in OAR 436-030-0155(1)(a) is troublesome. It is important to know whether documents were submitted in a timely manner and the time stamp requirement makes this clear. We request that this requirement is maintained.

Thank you for your time and for the opportunity to offer comments.

Best Regards,

Paloma Sparks, Oregon Business and Industry
Kirsten Adams, Associated General Contractors – Oregon Columbia Chapter

